Public Law 99-204
99th Congress

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An Act

To amend the Foreign Assistance Act of 1961 with respect to the activities of the Overseas Private Investment Corporation.

Dec. 23, 1985
[S. 947]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEPOSITORY

Overseas Private Investment Corporation Amendments Act of 1985.
22 USC 2151 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Overseas Private Investment Corporation Amendments Act of 1985".

SEC. 2. REFERENCE TO THE ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Assistance Act of 1961.

22 USC 2151 note.

SEC. 3. INCOME LEVELS IN LESS DEVELOPED COUNTRIES.

Section 231 (22 U.S.C. 2191) is amended in paragraph (2) of the second undesignated paragraph—

(1) by striking out "$680 or less in 1979 United States dollars" and inserting in lieu thereof "$896 or less in 1983 United States dollars"; and

(2) by striking out "$2,950 or more in 1979 United States dollars" and inserting in lieu thereof "$3,887 or more in 1983 United States dollars".

SEC. 4. PROTECTION OF HEALTH, SAFETY, AND THE ENVIRONMENT.

(a) POLICY DIRECTIVES.—Section 231 (22 U.S.C. 2191) is amended—

(1) in the second undesignated paragraph—

(A) in paragraph (1) by striking out "and" after the semicolon;

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (2) the following:

"(3) ensure that the project is consistent with the provisions of sections 118 and 119 of this Act relating to the environment and natural resources of, and biological diversity in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.";

Regulations.
22 USC 2151p, 2151q.

(2) in subsection (l) by striking out "and" after the semicolon;

(3) in subsection (m) by striking out the period at the end and inserting in lieu thereof "; and"; and

(4) by adding at the end the following:

"(n) to refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.".

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(b) NOTIFICATION OF COUNTRIES OF ENVIRONMENTAL RESTRICTIONS ON CERTAIN ACTIVITIES.—Section 237 (22 U.S.C. 2197) is amended by adding at the end thereof the following:

"(m)(1) Before finally providing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

International organizations.

"(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to the public health or safety or the environment which are applicable to the project; and

"(B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards, and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review, or study prepared with respect to the investment pursuant to section 239(g).

Infra.

"(2) Before finally providing insurance, reinsurance, guarantees, or financing for any investment subject to paragraph (1), the Corporation shall take into account any comments it receives on the project involved.

"(3) On or before September 30, 1986, the Corporation shall notify appropriate government officials of a country of the guidelines, standards, and legal restrictions described in paragraph (1) that apply to any project in that country—

"(A) which the Corporation identifies as potentially posing major hazards to public health and safety or the environment; and

"(B) for which the Corporation provided insurance, reinsurance, guarantees, or financing under this title before the date of enactment of this subsection and which is in the Corporation's portfolio on that date.".

(c) ENVIRONMENTAL IMPACT ASSESSMENTS.—Section 239(g) (22 U.S.C. 2199(g)) is amended to read as follows:

22 USC 2151p.

"(g) The requirements of section 118(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.".

SEC. 5. WORKERS RIGHTS; PUBLIC HEARINGS.

(a) ESTABLISHMENT OF REQUIREMENTS.—Title IV of chapter 2 of part I is amended by inserting after section 231 (22 U.S.C. 2191) the following new section:

22 USC 2191a.

"SEC. 231A. ADDITIONAL REQUIREMENTS.

"(a) WORKER RIGHTS.—

"(1) LIMITATION ON OPIC ACTIVITIES.—The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights, as defined in section 502(a)(4) of the Trade

Act of 1974 (19 U.S.C. 2462(a)(4)), to workers in that country (including any designated zone in that country). 98 Stat. 3019.

"(2) USE OF ANNUAL REPORTS ON WORKERS RIGHTS.—The Corporation shall, in making its determinations under paragraph (1), use the reports submitted to the Congress pursuant to section 505(c) of the Trade Act of 1974 (19 U.S.C. 2465(c)). The restriction set forth in paragraph (1) shall not apply until the first such report is submitted to the Congress. 98 Stat. 3023.

"(3) WAIVER.—Paragraph (1) shall not prohibit the Corporation from providing any insurance, reinsurance, guaranty, or financing with respect to a country if the President determines that such activities by the Corporation would be in the national economic interests of the United States. Any such determination shall be reported in writing to the Congress, together with the reasons for the determination.

"(b) PUBLIC HEARINGS.—The Board shall hold at least one public hearing each year in order to afford an opportunity for any person to present views as to whether the Corporation is carrying out its activities in accordance with section 231 and this section or whether any investment in a particular country should have been or should be extended insurance, reinsurance, guarantees, or financing under this title.". *Ante*, p. 1669.

(b) EFFECTIVE DATE.—Subsection (a) of section 231A, as added by subsection (a) of this section, shall not apply to projects insured, reinsured, guaranteed, or financed before the date of the enactment of this Act. 22 USC 2191a note.

SEC. 6. INSURANCE FOR LOSS DUE TO BUSINESS INTERRUPTION.

(a) ISSUING AUTHORITY.—Section 234(a) (22 U.S.C. 2194(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B) by striking out "and" after the semicolon;

(B) in subparagraph (C) by striking out the period and inserting in lieu thereof "; and"; and

(C) by adding at the end the following:

"(D) loss due to business interruption caused by any of the risks set forth in subparagraphs (A), (B), and (C).";" and

(2) in paragraph (4)—

(A) by striking out "civil strife insurance for the first time" and inserting in lieu thereof "insurance for the first time for loss due to business interruption";

(B) by striking out "definition of civil strife" and inserting in lieu thereof "definition of 'civil strife' or 'business interruption' ";

(C) by inserting immediately before the period at the end of the paragraph the following: "and, in the case of insurance for loss due to business interruption, an explanation of the underwriting basis upon which the insurance is to be offered"; and

(D) by adding at the end of the paragraph the following: "Any such report with respect to insurance for loss due to business interruption shall be considered in accordance with the procedures applicable to reprogramming notifications pursuant to section 634A of this Act.". 22 USC 2394-1.

(b) COMPENSATION FOR LOSS.—Section 237(f) (22 U.S.C. 2197(f)) is amended in the first sentence—

(1) by striking out "and (2)" and inserting in lieu thereof "(2)"; and

(2) by inserting immediately before the period at the end of the sentence the following: ", and (3) compensation for loss due to business interruption may be computed on a basis to be determined by the Corporation which reflects amounts lost".

SEC. 7. MAXIMUM CONTINGENT LIABILITY FOR INVESTMENT GUARANTEES.

Section 234(b) (22 U.S.C. 2194(b)) is amended in the last proviso by striking out "10" and inserting in lieu thereof "15".

SEC. 8. POOLING AND RISK-SHARING AGREEMENTS.

Section 234(f)(2) (22 U.S.C. 2194(f)(2)) is amended by striking out "other national or".

SEC. 9. FACULTATIVE REINSURANCE PROGRAM.

(a) ESTABLISHMENT.—Title IV of chapter 2 of part I is amended by inserting after section 234 (22 U.S.C. 2194) the following new section:

22 USC 2194b.

"SEC. 234A. FACULTATIVE REINSURANCE PROGRAM.

Contracts.

"(a) ESTABLISHMENT.—In order to encourage greater availability of political risk insurance for eligible investors, the Corporation shall establish, not later than one year after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, a pilot program of facultative reinsurance. The program shall provide reinsurance to insurance companies, financial institutions, other persons, or groups thereof, with respect to insurance issued by such companies, institutions, persons, or groups for new investments, and expansions of existing investments, by eligible investors, in excess of limits which the Corporation would otherwise normally apply for its exposure to such investments. Contracts of reinsurance issued under the program shall be on equitable terms. The program, and any project covered by reinsurance under the program, shall be consistent with the provisions of this title.

Ante, p. 1669.

"(b) PERSONS ELIGIBLE FOR THE PROGRAM.—An insurance company, financial institution, or other person shall be eligible to participate in the facultative reinsurance program established under subsection (a) if that company, institution, or other person is an eligible investor under this title. The Corporation shall take steps to encourage equitable participation in the program by all eligible persons.

"(c) MAXIMUM EXPOSURE.—The exposure of the Corporation under the facultative reinsurance program at any one time may not exceed $150,000,000 or, with respect to any one country, $50,000,000.

"(d) ADVISORY GROUP.—

"(1) ESTABLISHMENT AND MEMBERSHIP.—The Corporation shall establish a group to advise the Corporation on the development and implementation of the program of facultative reinsurance under this section. The group shall be composed of nine members as follows:

"(A) Three officers or employees of the Corporation designated by the Board.

"(B) Four persons appointed by the Board, of whom at least one shall represent an insurance company, one a reinsurance brokerage firm, and one an underwriter, a financial institution, or other person or entity eligible for

the facultative reinsurance program under this section. In selecting such persons, the Board shall consider their previous active involvement in the field of political risk insurance or reinsurance and shall consult with any major organizations representing insurance, reinsurance, and brokerage institutions as to the suitability of the respective candidates to represent their industry.

"(C) Two persons appointed by the Board from among persons who are eligible investors, other than persons described in subparagraph (B).

"(2) FUNCTIONS.—The advisory group shall advise the Corporation on the development and implementation of the facultative reinsurance program under this section, including ways to ensure equitable participation in the program by all eligible persons.

"(3) MEETINGS.—The advisory group shall meet not later than one hundred and eighty days after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, and not less than once in every one hundred and eighty-day period thereafter.

"(4) FEDERAL ADVISORY COMMITTEE ACT.—The advisory group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

"(e) REPORT TO THE CONGRESS.—The Corporation shall, not later than eighteen months after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the implementation of the facultative reinsurance program established under subsection (a).".

(b) TECHNICAL AMENDMENTS.—

(1) Section 235(d) (22 U.S.C. 2195(d)) is amended in the first sentence by striking out "or under similar predecessor guaranty authority" and inserting in lieu thereof ", under similar predecessor guaranty authority, or under section 234A".

(2) Section 237(f) (22 U.S.C. 2197(f)) is amended in the last sentence by inserting "or 234A" after "234".

(3) Section 240 (22 U.S.C. 2200) is amended in the last sentence by inserting "and section 234A" after "234".

SEC. 10. EXTENSION OF ISSUING AUTHORITY.

Section 235(a)(5) (22 U.S.C. 2195(a)(5)) is amended by striking out "1985" and inserting in lieu thereof "1988".

SEC. 11. AUDITS OF THE CORPORATION.

Section 239(c) (22 U.S.C. 2199(c)) is amended to read as follows:

"(c)(1) The Corporation shall be subject to the applicable provisions of chapter 91 of title 31, United States Code, except as otherwise provided in this title. 31 USC 9101 *et seq.*

"(2) An independent certified public accountant shall perform a financial and compliance audit of the financial statements of the Corporation at least once every three years, in accordance with generally accepted Government auditing standards for a financial and compliance audit, as issued by the Comptroller General. The independent certified public accountant shall report the results of such audit to the Board. The financial statements of the Corporation shall be presented in accordance with generally accepted accounting Report.

Report.

principles. These financial statements and the report of the accountant shall be included in a report which contains, to the extent applicable, the information identified in section 9106 of title 31, United States Code, and which the Corporation shall submit to the Congress not later than six and one-half months after the end of the last fiscal year covered by the audit. The General Accounting Office may review the audit conducted by the accountant and the report to the Congress in the manner and at such times as the General Accounting Office considers necessary.

Report.

"(3) In lieu of the financial and compliance audit required by paragraph (2), the General Accounting Office shall, if the Office considers it necessary or upon the request of the Congress, audit the financial statements of the Corporation in the manner provided in paragraph (2). The Corporation shall reimburse the General Accounting Office for the full cost of any audit conducted under this paragraph.

"(4) All books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Corporation and the accountant who conducts the audit under paragraph (2), which are necessary for purposes of this subsection, shall be made available to the representatives of the General Accounting Office.".

SEC. 12. EXEMPTION FROM TAXATION.

Section 239 (22 U.S.C. 2199) is amended by adding at the end thereof the following:

"(j) The Corporation, including its franchise, capital, reserves, surplus, advances, intangible property, and income, shall be exempt from all taxation at any time imposed by the United States, by any territory, dependency, or possession of the United States, or by any State, the District of Columbia, or any county, municipality, or local taxing authority.".

SEC. 13. PUBLICATION OF POLICY GUIDELINES.

Section 239, as amended by the preceding section of this Act, is further amended by adding at the end thereof the following:

"(k) The Corporation shall publish, and make available to applicants for insurance, reinsurance, guarantees, financing, or other assistance made available by the Corporation under this title, the policy guidelines of the Corporation relating to its programs.".

SEC. 14. EFFECTS OF OPIC ACTIVITIES ON EMPLOYMENT IN THE UNITED STATES.

(a) OPIC REPORTS.—Section 240A (22 U.S.C. 2200a) is amended—

(1) by inserting "(a)" immediately before "After" in the first sentence; and

(2) by adding at the end of the section the following new subsections:

Reports.
Loans.

"(b)(1) Each annual report required by subsection (a) shall contain projections of the effects on employment in the United States of all projects for which, during the preceding fiscal year, the Corporation initially issued any insurance, reinsurance, or guaranty or made any direct loan. Each such report shall include projections of—

Exports.

"(A) the amount of United States exports to be generated by those projects, both during the start-up phase and over a period of years;

"(B) the final destination of the products to be produced as a result of those projects; and

"(C) the impact such production will have on the production of similar products in the United States with regard to both domestic sales and exports. Exports.

"(2) Each report required by this subsection shall be based on an analysis of each of the projects described in paragraph (1). The reports may, however, present information and analysis in aggregate form, but only if—

"(A) those projects which are projected to have a positive effect on employment in the United States and those projects which are projected to have a negative effect on employment in the United States are grouped separately; and

"(B) there is set forth for each such grouping the key characteristics of the projects within that grouping, including the number of projects in each economic sector, the countries in which the projects in each economic sector are located, and the projected level of the impact of the projects in each economic sector on employment in the United States and on United States trade. Commerce and trade.

"(c)(1) Not later than December 31, 1987, the Corporation shall submit to the Congress a report analyzing the actual effects, as of September 30, 1986, on employment in the United States of all projects with respect to which any insurance, reinsurance, or guaranty issued by the Corporation was in effect on September 30, 1986, or with respect to which repayments on direct loans by the Corporation were being made as of that date. The report shall set forth— Reports. Loans.

"(A) the amount of United States exports generated by those projects during each fiscal year,

"(B) to the extent feasible, the final destination of the products produced each fiscal year as a result of those projects, and

"(C) the impact of such production on the production of similar products in the United States during each fiscal year with regard to both domestic sales and exports. Exports.

"(2) In preparing this report, the Corporation shall collect factual data for each of the projects described in paragraph (1). The report may, however, present this information and the analysis of this information in aggregate form, but only if—

"(A) those projects which have a positive effect on employment in the United States and those projects which have a negative effect on employment in the United States are grouped separately; and

"(B) there is set forth for each such grouping the key characteristics of the projects within that grouping, including the number of projects in each economic sector, the countries in which the projects in each economic sector are located, and the impact of the projects in each economic sector on the level of employment in the United States and on the United States trade balance. Commerce and trade.

"(3) The Corporation shall consult with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in determining the methodology to be used in acquiring the information and in doing the analysis necessary to prepare the report required by this subsection, including identification of which projects should be analyzed. To facilitate this consultation, the Corporation shall submit to those committees by September 30, 1986, a written description of its proposed methodology, including its proposed methodology with respect to determining final destinations.

"(4) To the extent that the report required by this subsection does not identify the final destination of the products produced as a result of a particular project, the report shall explain why it was not feasible to provide that information.

"(d) The Corporation shall maintain as part of its records—

"(1) all information collected in preparing the report required by subsection (c), whether the information was collected by the Corporation itself or by a contractor; and

"(2) a copy of the analysis of each project analyzed in preparing the reports required by either subsection (b) or (c).

"(e) Subsections (b) and (c) do not require the inclusion in any report submitted pursuant to those subsections of any information which would not be required to be made available to the public pursuant to section 552 of title 5, United States Code (relating to freedom of information).".

(b) GAO STUDY AND REPORT.—The Comptroller General shall conduct a study of the impact on employment in the United States of the activities of the Overseas Private Investment Corporation and shall prepare and transmit to the Congress a report setting forth the findings of that study within one year after the date of enactment of this Act.

SEC. 15. RETURN OF APPROPRIATED FUNDS.

Repeal.

Section 240B (22 U.S.C. 2200b) is repealed.

SEC. 16. FALSE ADVERTISING OR MISUSE OF THE NAME OF THE CORPORATION.

Section 709 of title 18, United States Code, is amended by inserting after the tenth paragraph the following:

"Whoever uses the words 'Overseas Private Investment', 'Overseas Private Investment Corporation', or 'OPIC', as part of the business or firm name of a person, corporation, partnership, business trust, association, or business entity; or".

SEC. 17. TECHNICAL AMENDMENTS.

(a) CLARIFICATION OF DEFINITION OF ELIGIBLE PERSON.—Clause (2) of section 238(c) (22 U.S.C. 2198(c)(2)) is amended by striking out "or any State or territory thereof" and inserting in lieu thereof ", any State or territory thereof, or the District of Columbia,".

(b) CONFORMING INTERNAL CROSS-REFERENCES.—Section 235 (22 U.S.C. 2195) is amended—

(1) in subsection (c)—

(A) by striking out "section 235(d)" and inserting in lieu thereof "subsection (d) of this section";

(B) by striking out "section 234(e)" and inserting in lieu thereof "subsection (e) of this section"; and

(C) by striking out "section 235(f)" and inserting in lieu thereof "subsection (f) of this section"; and

(2) in subsection (d) by striking out "section 235(f)" each place it appears and inserting in lieu thereof "subsection (f) of this section".

(c) REPEAL OF EXECUTED REPORTING REQUIREMENT.—Section 9 of the Overseas Private Investment Corporation Amendments Act of 1981 (Public Law 97-65) is amended—

(1) by striking out "(a)" after "SEC. 9."; and

(2) by striking out subsection (b).

22 USC 2200a.

22 USC 2200a note.

Approved December 23, 1985.

LEGISLATIVE HISTORY—S. 947 (H.R. 3166):

HOUSE REPORTS: No. 99-285 accompanying H.R. 3166 (Comm. on Foreign Affairs) and No. 99-428 (Comm. of Conference).
SENATE REPORT No. 99-156 (Comm. on Foreign Relations).
CONGRESSIONAL RECORD, Vol. 131 (1985):
Sept. 23, H.R. 3166 considered and passed House.
Nov. 14, considered and passed Senate.
Dec. 3, considered and passed House, amended, in lieu of H.R. 3166.
Dec. 11, House agreed to conference report.
Dec. 12, Senate agreed to conference report.

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